



Department of Justice

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U.S. AND EUROPEAN COMMUNITIES SIGN ANTITRUST COOPERATION AGREEMENT

Agreement Allows for Increased International Cooperation Leading to More Efficient Law Enforcement

WASHINGTON, D.C. -- Attorney General Janet Reno signed an antitrust cooperation agreement today with the European Communities outlining procedures under which one government requests another to use its own antitrust laws to address anticompetitive conduct that affects the requesting government. The so-called "positive comity" agreement supplements an earlier agreement that was signed with the EC in 1991.

"This agreement will greatly enhance the effectiveness of antitrust enforcement by stopping anticompetitive conduct not only within the U.S., but also abroad," said Attorney General Janet Reno. "This agreement recognizes that we are truly living in a global economy which makes cooperation with other governments essential."

Under the agreement, the requesting government or party relies on its counterpart to take action under its own laws, consulting frequently in the process. A positive comity referral will lead to efficient enforcement as each side deals with conduct occurring primarily in its own territory, and should help

to resolve disputes over access to foreign markets, the Department said.

Attorney General Janet Reno and Federal Trade Commission Chairman Robert Pitofsky signed the agreement today on behalf of the U.S. in a ceremony at the Department of Justice. Karel Van Miert, member of the European Commission and Commissioner responsible for competition policy, signed for the European Commission. Margaret Beckett, Secretary of State for Trade and Industry in the United Kingdom, signed the agreement earlier in Brussels on behalf of the Council of the European Union.

The existing 1991 antitrust cooperation agreement between the U.S. and the EC contains a provision allowing either side to ask the other to take antitrust enforcement action against practices that harm the requesting party's interests. The new agreement adds a presumption that positive comity will be used in certain situations, and provides details about each party's responsibilities.

Under the new agreement a requesting party will normally defer or suspend enforcement activities in favor of positive comity where anticompetitive conduct occurs in a foreign country but does not directly harm the requesting country's consumers. In cases where the anticompetitive conduct does harm the requesting country's consumers, the requesting country will still defer or suspend enforcement activities when the conduct occurs principally in and is directed principally towards the other party's territory. This presumption assumes that the requested party will investigate and take appropriate remedial measures in

conformity with its own laws. In conducting its investigation, the requested party would also report back to the requesting party on the status of the investigation, notify any changes in enforcement intentions, and comply with any reasonable suggestions of the requesting party.

Notwithstanding the presumption, the agreement contemplates that the parties may pursue separate and parallel enforcement activities where anticompetitive conduct, such as international price fixing cartels, affects both territories and justifies the imposition of penalties within both jurisdictions.

Assistant Attorney General Joel Klein, in charge of the Justice Department's Antitrust Division, also participated in the ceremony and played an important role in the negotiation of the agreement.

"We are very pleased with the level of cooperation between U.S. and EC competition authorities under the existing 1991 cooperation agreement," said Klein. "We expect today's agreement will help ensure that trade and investment between the U.S. and EU, and competition and consumer welfare within our territories, are not impeded by anticompetitive activities."

Klein added that the new agreement was particularly welcome in the U.S.-EU relationship, where the parties had a long history of cooperation, respect, and confidence in each other's enforcement regimes.

"In many situations a positive comity referral will produce the most effective and efficient enforcement, avoiding difficulties often encountered when an agency seeks to obtain evidence or implement remedies overseas," Klein said. "This agreement will also reduce frictions that can arise in some

cross-border enforcement situations, and will contribute to a climate conducive to further cooperative enforcement approaches in situations where parallel or coordinated investigations are appropriate."

Thus far, there has been one formal positive comity referral concerning the market for computer reservation systems for air transport services in the EU.

Today's agreement allows a party at a later point to decide to initiate or resume its enforcement activities, provided it promptly informs the other party of its intentions and reasons. The agreement does not require a requested party to act if it concludes that enforcement of its laws is not appropriate.

The new agreement does not apply to merger enforcement, where statutory deadlines in the U.S. and EU make the suspension or deferral of investigations inappropriate. Nor does the agreement provide for exchange of confidential business information, unless the consent of the source of the information has been obtained.

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